

Floodplain and Drainage Advisory Committee

February 21, 2012 Meeting Notes

Committee Chair Frank Piorko was unable to attend. Brooks Cahall and Mike Powell chaired the meeting in his absence. Mr. Cahall welcomed all and everyone introduced themselves. Committee members present were: Lew Killmer, Rich Collins, Paul Morrill, Ron Hunsicker, Barry Benton, Sarah Keifer, Richard Sobota, Fred Mott, Vince D'Anna, Bruce Jones, Mike Riemann, John Garcia, and Lori Harrison (for Gene Reed). In addition to Mr. Cahall and Mr. Powell, Greg Williams, Bob Enright, Jim Sullivan, Marcia Cagle, and Meghan Gloyd represented DNREC. David Athey and Gina Tonn represented DNREC's contractor Duffield Associates. Guests included Mike Clar from New Castle County and Jared Adkins from the Kent Conservation District.

Mr. Powell continued with the presentation that was not completed at the January 27, 2012 meeting with lack of enforcement of Development and Building Standards. Mr. Collins asked how towns stay in compliance with FEMA requirements without providing FEMA mandated documentation, specifically elevation certificates. Mr. Powell explained that in some instances, engineers or surveyors simply furnish memos describing elevations and neither FEMA nor the State reviews every application. All agreed that a future buyer in those instances may need to get an elevation certificate. Mr. Sobota clarified that while elevation certificates may be required by FEMA's insurance division, they are considered optional by FEMA's regulatory division.

Mr. Collins asked why the Committee has not heard from any flood plain managers and said he believes they cannot go forward without their input.

Mr. Riemann asked if the memos need to be signed and sealed and Mr. Powell said they did. Mayor Hunsicker noted that FEMA's technical bulletins include some recommendations and problems could be created if a Standard calling for their adoption is agreed upon.

Mr. Powell continued with a discussion about flood studies. Mr. Morrill asked how long FEMA reviews typically take and Mr. Powell replied 90 days. Mayor Hunsicker asked why a Standard was needed if FEMA already requires flood studies in certain instances. Mr. Powell said the requirement is not always enforced and the presented Standard also has clarifying language. He said the standard would not apply if a development avoids the floodplain.

Mr. D'Anna asked if the Standard pertains only to residential development and was told it did not. He said as a representative of real estate agents, better disclosure was needed about homes that may be at risk. Mr. Williams noted that a lot of communities enforce the Standard but do not send the information to FEMA.

Mr. Collins asked what goes on now. Mr. Garcia said there are two scenarios. First is an existing home in a floodplain and in this case a survey is needed to determine its floor elevation with respect to the flood elevation. An elevation certificate is completed to respond to a request from the bank, at an added cost to the buyer. Second is a home in an unmapped floodplain and in this case a flood study is needed with the information sent to FEMA by way of a LOMR

(Letter of Map Revision). This adds costs for the developer. Mr. Collins asked about requirements around the State and costs and was told both vary.

Mr. Powell asked Mr. Jones to explain the situation at Forest Glen. A flood study was done for this development when it was being designed, but FEMA did not accept the study. Later it was found that numerous homes are within the FEMA-delineated floodplain and their owners are now paying several thousand dollars a year in flood insurance.

There was further discussion about costs. Mr. Powell said DNREC had mapped (and FEMA accepted) over 100 homes adjacent to Tidbury Creek for between \$30,000 and \$40,000 for 5 ½ miles of stream.

Mr. Riemann said that Kent County does not allow subdivisions in the floodplain. For developments there, they identify the BFE, perform a survey, delineate the BFE on the survey, and then avoid doing anything below that elevation.

Mr. Collins noted that he recently spoke to a businessman who was going out of business due to excessive regulations. He wanted to expand but it was too expensive. He said he is tired of too many levels of government getting too much authority, said citizens have zero control over FEMA, and better enforcement is needed of existing laws and requirements before more are created.

Mr. Cahall began presentation of Drainage and Grading Standards with a discussion of easements. Mr. Jones asked who would be responsible for easements and was told by Mr. Cahall it could be anyone. Mr. Benton stated that DelDOT will typically accept responsibility for easements downstream from their drainage system but otherwise will not. Mr. Killmer said DelDOT will not allow people to access their drainage systems. He also said that there is no place for water to go downstream of Bethany Beach. Mr. Collins stated a new regulation for easements could shut down development. Mr. Garcia thought responsible parties needed to be identified better, particularly for maintenance responsibilities.

Mr. D'Anna said that the recording authority should be responsible for easements as enforcement as a civil matter would not work. Mr. Riemann noted that DelDOT typically requests easements as part of the development process but subsequently often does not want the responsibility of them. Mr. Adkins clarified that DelDOT will usually accept responsibility for drainage downstream of their conveyance systems but in upstream areas or in backyards no one wants to accept. Ms. Gloyd asked how "adequate width" and "obstruction" would be defined and Mr. Cahall replied it would be up to local governments. Ms. Keifer said language such as this should be in development codes and not building codes.

Mr. Collins thought this was a complex topic but Mr. D'Anna disagreed and cited New Castle County's approach which has been effect for years. Mr. Clar clarified that developments continuing existing drainage patterns may not need downstream easements but those creating new discharge points would. Easements give New Castle County right of access to inspect. Mr. Cahall asked if easements are needed in New Castle County over conveyances within a development to a BMP and Mr. Clar said they are required over conveyances and BMPs. Mr. Athey asked if the County takes responsibility over those easements and Mr. Clar stated it is

usually the HOA. Mr. Garcia noted the County often does by default as HOAs are usually ill-equipped to take responsibility.

Mr. Collins sought clarification about the Standards and whether or not they are intended solely for within subdivisions or downstream too. Mr. Cahall said it would cover within subdivisions only and not downstream. Mr. Jones said downstream drainage can be a huge issue. Mr. Benton said DelDOT does not allow increases in flow rates to its right-of-way.

Mr. Adkins said in Kent and probably Sussex County, developers need to demonstrate that capacity exists downstream and if not, they need to either secure an easement or provide for retention on site. Mr. Clar clarified that property owners are entitled to discharge predevelopment flow rates off-site. Mr. Jones described the Buckingham Green situation where the developer met the New Castle County development requirements about 20 years ago, but subsequently was sued by downstream property owners.

Mr. Cahall presented the next Drainage and Grading Standards regarding obstructions in drainage conveyances. Mr. Jones asked who would be responsible for enforcing the Standard and Mr. Cahall replied local governments and also clarified the Standard would apply to any conveyance and not just those in easements.

Mr. Collins asked if the Standard would apply to all developments. Mr. Cahall said that could be discussed but perhaps it could apply to major subdivisions but not minor subdivisions. Current enforcement was discussed by several Committee members and Mr. Cahall said degree of enforcement varies around the State. Mr. Adkins said some municipalities in Kent County use vague words such as “adequate drainage” and not specifics like “10-year event” and that he does not look at backyard drainage as part of his reviews. Mr. Riemann believes DelDOT looks at all drainage within a development.

Mr. Cahall continued his presentation of Drainage and Grading Standards with a discussion of lines and grades and as-built plans and offered that the use of the word “minimum” may not be appropriate.

Mr. Garcia said a building could be lower than a roadway but good drainage could still exist. Mr. Riemann said that building higher than roadway elevations could be very expensive. If accepted, the proposed Standard would probably not result in much change in New Castle County but would in Kent and Sussex Counties and in many situations a lot of information is already required.

Mr. Cahall explained the rationale behind the Standards by citing two common problems. First is development on existing recorded lots when adjacent lots have already been developed. Second is a large development with multiple builders working at different times. It is much less a problem on major subdivisions with a single builder.

Mr. Morrill noted that inspections are not the same as having an as-built plan prepared. Mr. Garcia said that New Castle County requires as-built plans but grades are not included. Mr. Jones noted that if adequate grades are not provided, owners typically call DNREC with problems and believes preparation of lines and grades plans would be a small effort and result in a good “bang for the buck”. Mr. Riemann said some of his clients have these plans prepared

even if not required. Mr. Sobota subsequently asked if that was to avoid potential legal action and Mr. Riemann said he did not know.

Mr. Adkins believes lack of lines and grades plans can lead to problems and that some standards may be good but is worried about his ability to provide staff time and effort needed to review. Mr. Clar said the cost to prepare these plans is minimal compared to the cost of moving dirt. Mr. D'Anna asked if grandfathered lots are a problem and Mr. Cahall replied that they are.

Mr. Collins said these Standards would result in people of limited means needing to put more money up front and requiring plans for developments over 5,000 square feet would be another layer of bureaucracy. He noted that the unpredictability of timing in following the regulations can be an issue. Mr. Riemann asked if the Kent Conservation District has authority over grading and Mr. Adkins said it does not.

Mr. Sobota stated that sometimes going above and beyond minimum standards reduces legal costs in the future. In an ideal world, standards would be gauged on the 100-year event.

Mr. Powell led the discussion regarding Floodplain and Development and Building Recommendations. Mr. Collins stated for the record he is opposed to a separate plan review or building permit process for development or construction in floodplains as he believes that could lead to denying permits.

Mr. Jones asked if disallowing the "point on the boundary method" would preclude the approach Mr. Riemann described earlier. Mr. Riemann said he thought Kent County's process was even more conservative than the "point on the boundary" method. Mr. Powell said the Recommendation states a certain level of project should have a better process than others and it would only apply when subdividing within a floodplain. Mr. D'Anna said there should not be a threshold and that the government should take responsibility. He reiterated that a recommendation should be for the Legislature to provide more funds.

Mr. Cahall presented Drainage and Grading Recommendations. There were no comments.

Mr. Athey explained that as DNREC's support contractor, he and Ms. Tonn were being tasked with developing a format for Standards and Recommendations that could be voted upon. He said that they along with DNREC had looked into matrices, flow charts, and text-based documents and is seeking Committee input for the presentation of Standards and Recommendations. Examples were provided as part of the presentation.

Mr. Collins stated that the bill doesn't say what the General Assembly will do with the report. Mr. Powell said that they want to get feedback from local governments as to what extent they currently meet or do not meet the proposal standards and get a sense as to whether local governments are capable of enforcing minimum standards. Towns will have assistance from DNREC to look at their codes. Mr. Killmer said that coastal communities have separate issues and may need separate standards.

Mr. Jones wanted to know how others such as neighboring states approached these problems. Mr. Powell noted that Kent County revised their code 10 years ago to prevent subdivision in the floodplain. It was asked what New Jersey does in coastal areas, and Mr. Powell replied that New Jersey has State standards enforced at the local level. Mr. Williams added that New Jersey has

its own floodplain maps. Mr. Jones said that it is difficult to make a decision without knowing what the cost impacts are of the proposed standards.

Mr. Clar said providing background information and the benefits of different scenarios would assist with the discussions. Mr. Adkins said that it would be helpful to describe which communities have which freeboard standards.

The meeting was adjourned at 12:00.